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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

**PART 240—REGULATION 12B—REGISTRATION AND REPORTING**

Attention Electronic Filers

This Regulation should be read in conjunction with Regulation S-T (PART 232 of this Chapter), which governs the preparation and submission of documents in electronic format. Many provisions relating to the preparation and submission of documents in paper format contained in this regulation are superseded by the provisions of Regulation S-T for documents required to be filed in electronic format.

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## GENERAL

### REG. §240.12b-1. Scope of Regulation

The rules contained in this regulation shall govern all registration statements pursuant to Section 12(b) and 12(g) of the Act and all reports filed pursuant to Section 13 and 15(d) of the Act, including all amendments to such statements and reports, except that any provision in a form covering the same subject matter as any such rule shall be controlling.

### REG. §240.12b-2. Definitions

Unless the context otherwise requires, the following terms, when used in the rules contained in this regulation or in Regulation 13A or 15D or in forms for statements and reports filed pursuant to Sections 12, 13 or 15(d) of the Act, shall have the respective meanings indicated in this rule:

Accelerated filer and large accelerated filer. (1) Accelerated filer. The term accelerated filer means an issuer after it first meets the following conditions as of the end of its fiscal year:

- (i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$75 million or more, but less than \$700 million, as of the last business day of the issuer's most recently completed second fiscal quarter;
- (ii) The issuer has been subject to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) for a period of at least twelve calendar months;
- (iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and
- (iv) The issuer is not eligible to use Forms 10-KSB and 10-QSB (§249.310b and §249.308b of this chapter) for its annual and quarterly reports.

(2) Large accelerated filer. The term large accelerated filer means an issuer after it first meets the following conditions as of the end of its fiscal year:

- (i) The issuer had an aggregate worldwide market value of the voting and non-voting common equity held by its non-affiliates of \$700 million or more, as of the last business day of the issuer's most recently completed second fiscal quarter;
- (ii) The issuer has been subject to the requirements of section 13(a) or 15(d) of the Act for a period of at least twelve calendar months;
- (iii) The issuer has filed at least one annual report pursuant to section 13(a) or 15(d) of the Act; and
- (iv) The issuer is not eligible to use Forms 10-KSB and 10-QSB for its annual and quarterly reports.

(3) Entering and exiting accelerated filer and large accelerated filer status.

(i) The determination at the end of the issuer's fiscal year for whether a non-accelerated filer becomes an accelerated filer, or whether a non-accelerated filer or accelerated filer becomes a large accelerated filer, governs the deadlines for the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer or large accelerated filer.

(ii) Once an issuer becomes an accelerated filer, it will remain an accelerated filer unless the issuer determines at the end of a fiscal year that the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of the issuer was less than \$50 million, as of the last business day of the issuer's most recently completed second fiscal quarter. An issuer making this determination becomes a non-accelerated filer. The issuer will not become an accelerated filer again unless it subsequently meets the conditions in paragraph (1) of this definition.

(iii) Once an issuer becomes a large accelerated filer, it will remain a large accelerated filer unless the issuer

determines at the end of a fiscal year that the aggregate worldwide market value of the voting and non-voting common equity held by non-affiliates of the issuer was less than \$500 million, as of the last business day of the issuer's most recently completed second fiscal quarter. If the issuer's aggregate worldwide market value was \$50 million or more, but less than \$500 million, as of the last business day of the issuer's most recently completed second fiscal quarter, the issuer becomes an accelerated filer. If the issuer's aggregate worldwide market value was less than \$50 million, as of the last business day of the issuer's most recently completed second fiscal quarter, the issuer becomes a non-accelerated filer. An issuer will not become a large accelerated filer again unless it subsequently meets the conditions in paragraph (2) of this definition.

(iv) The determination at the end of the issuer's fiscal year for whether an accelerated filer becomes a non-accelerated filer, or a large accelerated filer becomes an accelerated filer or a non-accelerated filer, governs the deadlines for the annual report to be filed for that fiscal year, the quarterly and annual reports to be filed for the subsequent fiscal year and all annual and quarterly reports to be filed thereafter while the issuer remains an accelerated filer or non-accelerated filer.

NOTE to paragraphs (1), (2) and (3): The aggregate worldwide market value of the issuer's outstanding voting and non-voting common equity shall be computed by use of the price at which the common equity was last sold, or the average of the bid and asked prices of such common equity, in the principal market for such common equity.

*Affiliate.* An "affiliate" of, or a person "affiliated" with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

*Amount.* The term "amount", when used in regard to securities, means the principal amount if relating to evidences of indebtedness, the number of shares if relating to shares, and the number of units if relating to any other kind of security.

*Associate.* The term "associate" used to indicate a relationship with any person, means

- (1) any corporation or organization (other than the registrant or a majority-owned subsidiary of the registrant) of which such person is an officer or partner or is, directly or indirectly, the beneficial owner of 10 percent or more of any class of equity securities,
- (2) any trust or other estate in which such person has a substantial beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity, and
- (3) any relative or spouse of such person, or any relative of such spouse, who has the same home as such person or who is a director or officer of the registrant or any of its parents or subsidiaries.

*Certified.* The term "certified," when used in regard to financial statements, means examined and reported upon with an opinion expressed by an independent public or certified public accountant.

*Charter.* The term "charter" includes articles of incorporation, declarations of trust, articles of association or partnership, or any similar instrument, as amended, effecting (either with or without filing with any governmental agency) the organization or creation of an incorporated or unincorporated person.

*Common equity.* The term "common equity" means any class of common stock or an equivalent interest, including but not limited to a unit of beneficial interest in a trust or a limited partnership interest.

*Control.* The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

*Depository share.* The term "depository share" means a security, evidenced by an American Depositary Receipt, that represents a foreign security or a multiple of or fraction thereof deposited with a depository.

*Employee.* The term "employee" does not include a director, trustee, or officer.

*Fiscal year.* The term "fiscal year" means the annual accounting period or, if no closing date has been adopted, the calendar year ending on December 31.

*Majority-owned Subsidiary.* The term “majority-owned subsidiary” means a subsidiary more than 50 percent of whose outstanding securities representing the right, other than as affected by events of default, to vote for the election of directors, is owned by the subsidiary’s parent and/or one or more of the parent’s other majority-owned subsidiaries.

*Managing underwriter.* The term “managing underwriter” includes an underwriter (or underwriters) who, by contract or otherwise, deals with the registrant; organizes the selling effort; receives some benefit directly or indirectly in which all other underwriters similarly situated do not share in proportion to their respective interests in the underwriting; or represents any other underwriters in such matters as maintaining the records of the distribution, arranging the allotments of securities offered or arranging for appropriate stabilization activities, if any.

*Material.* The term “material,” when used to qualify a requirement for the furnishing of information as to any subject, limits the information required to those matters to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to buy or sell the securities registered.

*Parent.* A “parent” of a specified person is an affiliate controlling such person directly, or indirectly through one or more intermediaries.

*Predecessor.* The term “predecessor” means a person the major portion of the business and assets of which another person acquired in a single succession or in a series of related successions in each of which the acquiring person acquired the major portion of the business and assets of the acquired person.

*Previously filed or reported.* The terms “previously filed” and “previously reported” mean previously filed with, or reported in, a statement under Section 12, a report under Section 13 or 15(d), a definitive proxy statement or information statement under Section 14 of the act, or a registration statement under the Securities Act of 1933: Provided, That information contained in any such document shall be deemed to have been previously filed with, or reported to, an exchange only if such document is filed with such exchange.

*Principal underwriter.* The term “principal underwriter” means an underwriter in privity of contract with the issuer of the securities as to which he is underwriter.

*Promoter.*

(1) The term “promoter” includes:

- (i) Any person who, acting alone or in conjunction with one or more other persons, directly or indirectly takes initiative in founding and organizing the business or enterprise of an issuer; or
- (ii) Any person who, in connection with the founding and organizing of the business or enterprise of an issuer, directly or indirectly receives in consideration of services or property, or both services and property, 10 percent or more of any class of securities of the issuer or 10 percent or more of the proceeds from the sale of any class of such securities. However, a person who receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property shall not be deemed a promoter within the meaning of this paragraph if such person does not otherwise take part in founding and organizing the enterprise.

(2) All persons coming within the definition of “promoter” in paragraph 1 of this definition may be referred to as “founders” or “organizers” or by another term provided that such term is reasonably descriptive of those persons’ activities with respect to the issuer.

*Prospectus.* Unless otherwise specified or the context otherwise requires, the term “prospectus” means a prospectus meeting the requirements of Section 10(a) of the Securities Act of 1933 as amended.

*Registrant.* The term “registrant” means an issuer of securities with respect to which a registration statement or report is to be filed.

*Registration statement.* The term “registration statement” or “statement”, when used with reference to registration pursuant to Section 12 of the act, includes both an application for registration of securities on a national securities exchange pursuant to Section 12(b) of the act and a registration statement filed pursuant to Section 12(g) of the act.

*Share.* The term “share” means a share of stock in a corporation or unit of interest in an unincorporated person.

*Significant subsidiary.* The term “significant subsidiary” means a subsidiary, including its subsidiaries, which meets any of the following conditions:

- (1) The registrant’s and its other subsidiaries’ investments in and advances to the subsidiary exceed 10 percent of the total assets of the registrant and its subsidiaries consolidated as of the end of the most recently completed fiscal year (for a proposed business combination to be accounted for as a pooling of interests, this condition is also met when the number of common shares exchanged or to be exchanged by the registrant exceeds 10 percent of its total common shares outstanding at the date the combination is initiated); or
- (2) The registrant’s and its other subsidiaries’ proportionate share of the total assets (after intercompany eliminations) of the subsidiary exceeds 10 percent of the total assets of the registrants and its subsidiaries consolidated as of the end of the most recently completed fiscal year; or
- (3) The registrant’s and its other subsidiaries’ equity in the income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle of the subsidiary exceeds 10 percent of such income of the registrant and its subsidiaries consolidated for the most recently completed fiscal year.

*Computational note :* For purposes of making the prescribed income test the following guidance should be applied:

1. When a loss has been incurred by either the parent and its subsidiaries consolidated or the tested subsidiary, but not both, the equity in the income or loss of the tested subsidiary should be excluded from the income of the registrant and its subsidiaries consolidated for purposes of the computation.
2. If income of the registrant and its subsidiaries consolidated for the most recent fiscal year is at least 10 percent lower than the average of the income for the last five fiscal years, such average income should be substituted for purposes of the computation. Any loss years should be omitted for purposes of computing average income.

*Small Business Issuer.* The term “small business issuer” means an entity that meets the following criteria:

- (1) has revenues of less than \$25,000,000;
- (2) is a U.S. or Canadian issuer;
- (3) Is not an investment company and is not an asset-backed issuer (as defined in § 229.1101 of this chapter); and
- (4) if a majority owned subsidiary, the parent corporation is also a small business issuer.

Provided however, that an entity is not a small business issuer if it has a public float (the aggregate market value of the issuer’s outstanding voting and non-voting common equity held by non-affiliates) of \$25,000,000 or more.

Note: The public float of a reporting company shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, on a date within 60 days prior to the end of its most recent fiscal year. The public float of a company filing an initial registration statement under the Exchange Act shall be determined as of a date within 60 days of the date the registration statement is filed. In the case of an initial public offering of securities, public float shall be computed on the basis of the number of shares outstanding prior to the offering and the estimated public offering price of the securities.

*Subsidiary.* A “subsidiary” of a specified person is an affiliate controlled by such person directly, or indirectly through one or more intermediaries. (See also “majority-owned subsidiary,” “significant subsidiary,” and “totally-held subsidiary.”)

*Succession.* The term “succession” means the direct acquisition of the assets comprising a going business, whether by merger, consolidation, purchase, or other direct transfer. The term does not include the acquisition of control of a business unless followed by the direct acquisition of its assets. The terms “succeed” and “successor” have meanings correlative to the foregoing.

*Totally held subsidiary.* The term “totally held subsidiary” means a subsidiary 1 substantially all of whose outstanding securities are owned by its parent and/or the parent’s other totally held subsidiaries, and 2 which is not indebted to any person other than its parent and/or the parent’s other totally held subsidiaries in an amount which is material in relation to the particular subsidiary, excepting indebtedness incurred in the ordinary course of business which is not overdue and which matures within one year from the date of its creation, whether evidenced by securities or not.

*Voting securities.* The term “voting securities” means securities the holders of which are presently entitled to vote for the election of directors.

*Wholly-owned subsidiary.* The term “wholly-owned subsidiary” means a subsidiary substantially all of whose outstanding voting securities are owned by its parent and/or the parent’s other wholly-owned subsidiaries.

### **REG. §240.12b-3. Title of Securities**

Wherever the title of securities is required to be stated there shall be given such information as will indicate the type and general character of the securities, including the following:

- (a) In the case of shares, the par or stated value, if any; the rate of dividends, if fixed, and whether cumulative or non-cumulative; a brief indication of the preference, if any; and if convertible, a statement to that effect.
- (b) In the case of funded debt, the rate of interest; the date of maturity, or if the issue matures serially, a brief indication of the serial maturities, such as “maturing serially from 1950 to 1960”; if the payment of principal or interest is contingent, an appropriate indication of such contingency; a brief indication of the priority of the issue; and if convertible, a statement to that effect.
- (c) In the case of any other kind of security, appropriate information of comparable character.

### **REG. §240.12b-4. Supplemental Information**

The Commission or its staff may, where it is deemed appropriate, request supplemental information concerning the registrant, a registration statement or a periodic or other report under the Act. This information shall not be required to be filed with or deemed part of the registration statement or report. The information shall be returned to the registrant upon request, provided that:

- (a) Such request is made at the time such information is furnished to the staff;
- (b) The return of such information is consistent with the protection of investors; and
- (c) The return of such information is consistent with the provisions of the Freedom of Information Act (5 U.S.C. 552).

### **REG. §240.12b-5. Determination of Affiliates of Banks**

In determining whether a person is an “affiliate” or “parent” of a bank or whether a bank is a “subsidiary” or “majority-owned subsidiary” of a person, within the meaning of those terms as defined in §240.12b-2, voting securities of the bank held by a corporation all of the stock of which is directly owned by the United States Government shall not be taken into consideration.

### **REG. §240.12b-6. When Securities Are Deemed to be Registered**

A class of securities with respect to which a registration statement has been filed pursuant to section 12 of the act shall be deemed to be registered for the purposes of sections 13,14,15(d) and 16 of the act and the rules and regulations there under only when such statement has become effective as provided in section 12, and securities of said class shall not be subject to sections 13, 14 and 16 of the act until such statement has become effective as provided in section 12.

### **REG. §240.12b-7. [Filing Fee][removed]**

## FORMAL REQUIREMENTS

### REG. §240.12b-10. Requirements as to a Proper Form

Every statement or report shall be on the form prescribed therefore by the Commission, as in effect on the date of filing. Any statement or report shall be deemed to be filed on the proper form unless objection to the form is made by the Commission within thirty days after the date of filing.

### REG. §240.12b-11. Number of Copies-Signatures-Binding

- (a) Except as provided in a particular form, three complete copies of each statement or report, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the Commission. At least one complete copy of each statement shall be filed with each exchange on which the securities covered thereby are to be registered. At least one complete copy of each report under section 13 of the Act shall be filed with each exchange on which the registrant has securities registered.
- (b) At least one copy of each statement or report filed with the Commission and one copy thereof filed with each exchange shall be manually signed in the manner prescribed by the appropriate form.
- (c) Each copy of a statement or report filed with the Commission or with an exchange shall be bound in one or more parts. Copies filed with the Commission shall be bound without stiff covers. The statement or report shall be bound on the left side in such a manner as to leave the reading matter legible.
- (d) *Signatures.* Where the Act or the rules, forms, reports or schedules there under, including paragraph (b) of this section, require a document filed with or furnished to the commission to be signed, such document shall be manually signed, or signed using either typed signatures or duplicated or facsimile versions of manual signatures. Where typed, duplicated or facsimile signatures are used, each signatory to the filing shall manually sign a signature page or other document authenticating, acknowledging or otherwise adopting his or her signature that appears in the filing. Such document shall be executed before or at the time the filing is made and shall be retained by the filer for a period of five years. Upon request, the filer shall furnish to the Commission or its staff a copy of any or all documents retained pursuant to this section.

### REG. §240.12b-12. Requirements as to Paper, Printing and Language

- (a) Statements and reports shall be filed on good quality, unglazed white paper, no larger than 8½ x 11 inches in size, insofar as practicable. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ x 11 inches in size.
- (b) The statement or report and, insofar as practicable, all papers and documents filed as a part thereof, shall be printed, lithographed, mimeographed, or typewritten. However, the statement or report or any portion thereof may be prepared by any similar process which, in the opinion of the Commission, produces copies suitable for a permanent record and microfilming. Irrespective of the process used, all copies of any such material shall be clear, easily readable and suitable for repeated photocopying. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies.
- (c) The body of all printed statements and reports and all notes to financial statements and other tabular data included therein shall be in roman type at least as large and as legible as 10-point modern type. However, to the extent necessary for convenient presentation, financial statements and other tabular data, including tabular data in notes, may be in roman type at least as large and as legible as 8-point modern type. All such type shall be leaded at least 2 points.
- (d) (1) All Exchange Act filings and submissions must be in the English language, except as otherwise provided by this section. If a filing or submission requires the inclusion of a document that is in a foreign language, a party must submit instead a fair and accurate English translation of the entire foreign language document, except as provided by paragraph (d)(3) of this section.  
  
(2) If a filing or submission subject to review by the Division of Corporation Finance requires the inclusion of a foreign language document as an exhibit or attachment, a party must submit a fair and accurate English translation of the foreign language document if consisting of any of the following, or an amendment of any of the following:

- (i) Articles of incorporation, memoranda of association, bylaws, and other comparable documents, whether original or restated;
  - (ii) Instruments defining the rights of security holders, including indentures qualified or to be qualified under the Trust Indenture Act of 1939;
  - (iii) Voting agreements, including voting trust agreements;
  - (iv) Contracts to which directors, officers, promoters, voting trustees or security holders named in a registration statement, report or other document are parties;
  - (v) Contracts upon which a filer's business is substantially dependent;
  - (vi) Audited annual and interim consolidated financial information; and
  - (vii) Any document that is or will be the subject of a confidential treatment request under §240.24b-2 or §230.406 of this chapter.
- (3)(i) A party may submit an English summary instead of an English translation of a foreign language document as an exhibit or attachment to a filing or submission subject to review by the Division of Corporation Finance, as long as:
- (A) The foreign language document does not consist of any of the subject matter enumerated in paragraph (d)(2) of this section; or
  - (B) The applicable form permits the use of an English summary.
- (ii) Any English summary submitted under paragraph (d)(3) of this section must:
- (A) Fairly and accurately summarize the terms of each material provision of the foreign language document; and
  - (B) Fairly and accurately describe the terms that have been omitted or abridged.
- (4) When submitting an English summary or English translation of a foreign language document under this section, a party must identify the submission as either an English summary or English translation. A party may submit a copy of the unabridged foreign language document when including an English summary or English translation of a foreign language document in a filing or submission. A party must provide a copy of any foreign language document upon the request of Commission staff.
- (5) A foreign government or its political subdivision must provide a fair and accurate English translation of its latest annual budget submitted as Exhibit B to Form 18 (§249.218 of this chapter) or Exhibit (c) to Form 18-K (§249.318 of this chapter) only if one is available. If no English translation is available, a filer must provide a copy of the foreign language version of its latest annual budget as an exhibit.
- (6) A Canadian issuer may file an exhibit, attachment or other part of a Form 40-F registration statement or annual report (§249.240f of this chapter), Schedule 13E-4F (§240.13e-102), Schedule 14D-1F (§240.14d-102), or Schedule 14D-9F (§240.14d-103), that contains text in both French and English if the issuer included the French text to comply with the requirements of the Canadian securities administrator or other Canadian authority and, for an electronic filing, if the filing is an HTML document, as defined in Regulation S-T Rule 11 (17 CFR 232.11).
- (e) Where a statement or report is distributed to investors through an electronic medium, issuers may satisfy legibility requirements applicable to printed documents such as paper size and type size and font, by presenting all required information in a format readily communicated to investors.

#### **REG. §240.12b-13. Preparation of Statement or Report**

The statement or report shall contain the numbers and captions of all items of the appropriate form, but the text of the items may be omitted provided the answers thereto are so prepared as to indicate to the reader the coverage of the items without the necessity of his referring to the text of the items or instructions thereto. However, where any item requires



information to be given in tabular form, it shall be given in substantially the tabular form specified in the item. All instructions, whether appearing under the items of the form or elsewhere therein, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made.

#### **REG. §240.12b-14. Riders — Inserts**

Riders shall not be used. If the statement or report is typed on a printed form, and the space provided for the answer to any given item is insufficient, reference shall be made in such space to a full insert page or pages on which the item number and caption and the complete answer are given.

#### **REG. §240.12b-15 Amendments**

All amendments must be filed under cover of the form amended, marked with the letter “A” to designate the document as an amendment, e.g., “10-K/A,” and in compliance with pertinent requirements applicable to statements and reports. Amendments filed pursuant to this section must set forth the complete text of each item as amended. Amendments must be numbered sequentially and be filed separately for each statement or report amended. Amendments to a statement may be filed either before or after registration becomes effective. Amendments must be signed on behalf of the registrant by a duly authorized representative of the registrant. An amendment to any report required to include the certifications as specified in §240.13a-14(a) or §240.15d-14(a) must include new certifications by each principal executive and principal financial officer of the registrant, and an amendment to any report required to be accompanied by the certifications as specified in §240.13a-14(b) or §240.15d-14(b) must be accompanied by new certifications by each principal executive and principal financial officer of the registrant. An amendment to any report required to include the certifications as specified in § 240.13a-14(d) or § 240.15d-14(d) must include a new certification by an individual specified in § 240.13a-14(e) or § 240.15d-14(e), as applicable. The requirements of the form being amended will govern the number of copies to be filed in connection with a paper format amendment. Electronic filers satisfy the provisions dictating the number of copies by filing one copy of the amendment in electronic format. See Rule 309 of this chapter (Rule 309 of Regulation S-T).

### **GENERAL REQUIREMENTS AS TO CONTENTS**

#### **REG. §240.12b-20. Additional Information**

In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.

#### **REG. §240.12b-21. Information Unknown or Not Available**

Information required need be given only insofar as it is known or reasonably available to the registrant. If any required information is unknown and not reasonably available to the registrant, either because the obtaining thereof would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the registrant, the information may be omitted, subject to the following conditions.

- (a) The registrant shall give such information on the subject as it possesses or can acquire without unreasonable effort or expense, together with the sources thereof.
- (b) The registrant shall include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.

#### **REG. §240.12b-22. Disclaimer of Control**

If the existence of control is open to reasonable doubt in any instance, the registrant may disclaim the existence of control and any admission thereof; in such case, however, the registrant shall state the material facts pertinent to the possible existence of control.

#### **REG. §240.12b-23. Incorporation by Reference**

Except for information filed as an exhibit which is covered by Rule 12b-32, information may be incorporated by

reference in answer, or partial answer, to any item of a registration statement or report subject to the following provisions:

- (1) Financial statements incorporated by reference shall satisfy the requirements of the form or report in which they are incorporated. Financial statements or other financial data required to be given in comparative form for two or more fiscal years or periods shall not be incorporated by reference unless the material incorporated by reference includes the entire period for which the comparative data is given;
- (2) Information in any part of the registration statement or report may be incorporated by reference in answer, or partial answer, to any other item of the registration statement or report; and
- (3) Copies of any information or financial statement incorporated into a registration statement or report by reference, or copies of the pertinent pages of the document containing such information or statement, shall be filed as an exhibit to the statement or report, except that:
  - (i) A proxy or information statement incorporated by reference in response to Part III of Form 10-K and Form 10-KSB; and
  - (ii) a form of prospectus filed pursuant to Rule 424(b) incorporated by reference in response to Item 1 of Form 8-A need not be filed as an exhibit.
  - (iii) Information filed on Form 8-K (17 CFR 249.308) need not be filed as an exhibit.
- (b) Any incorporation by reference of matter pursuant to this section shall be subject to the provisions of Item 10(f) of Regulation S-B and Item 10(d) of Regulation S-K restricting incorporation by reference of documents which incorporate by reference other information. Material incorporated by reference shall be clearly identified in the reference by page, paragraph, caption or otherwise. Where only certain pages of a document are incorporated by reference and filed as an exhibit, the document from which the material is taken shall be clearly identified in the reference. An express statement that the specified matter is incorporated by reference shall be made at the particular place in the statement or report where the information is required. Matter shall not be incorporated by reference in any case where such incorporation would render the statement or report incomplete, unclear or confusing.

**REG. §240.12b-25.**

**Notification of Inability to Timely File All or Any Required Portion of a Form  
10-K, 10-KSB, 20-F, 11-K, N-SAR, N-CSR, 10-Q, 10-QSB or 10-D**

- (a) If all or any required portion of an annual or transition report on Form 10-K, 10-KSB, 20-F or 11-K (17 CFR 249.310, 249.310b, 249.220f or 249.311), a quarterly or transition report on Form 10-Q or 10-QSB (17 CFR 249.308a or 249.308b), or a distribution report on Form 10-D (17 CFR 249.312) required to be filed pursuant to section 13 or 15(d) of the Act (15 U.S.C. 78m or 78o(d)) and rules thereunder, or if all or any required portion of a semi-annual, annual or transition report on Form N-CSR (17 CFR 249.331; 17 CFR 274.128) or Form N-SAR (17 CFR 249.330; 17 CFR 274.101) required to be filed pursuant to section 13 or 15(d) of the Act or section 30 of the Investment Company Act of 1940 (15 U.S.C. 80a-29) and the rules thereunder, is not filed within the time period prescribed for such report, the registrant, no later than one business day after the due date for such report, shall file a Form 12b-25 (17 CFR 249.322) with the Commission which shall contain disclosure of its inability to file the report timely and the reasons therefor in reasonable detail.
- (b) With respect to any report or portion of any report described in paragraph (a) of this section which is not timely filed because the registrant is unable to do so without unreasonable effort or expense, such report shall be deemed to be filed on the prescribed due date for such report if:
  - (1) The registrant files the Form 12b-25 in compliance with paragraph (a) of this section and, when applicable, furnishes the exhibit required by paragraph (c) of this section;
  - (2) The registrant represents in the Form 12b-25 that:
    - (i) The reason(s) causing the inability to file timely could not be eliminated by the registrant without unreasonable effort or expense; and
    - (ii) The subject annual report, semi-annual report or transition report on Form 10-K, 10-KSB, 20-F, 11-K, N-SAR, or N-CSR, or portion thereof, will be filed no later than the fifteenth calendar day follow-

ing the prescribed due date; or the subject quarterly report or transition report on Form 10-Q or 10-QSB or distribution report on Form 10-D, or portion thereof, will be filed no later than the fifth calendar day following the prescribed due date; and

- (3) The report/portion thereof is actually filed within the period specified by paragraph (b)(2)(ii) of this section.
- (c) If paragraph (b) of this section is applicable and the reason the subject report/portion thereof cannot be filed timely without unreasonable effort or expense relates to the inability of any person, other than the registrant, to furnish any required opinion, report or certification, the Form 12b-25 shall have attached as an exhibit a statement signed by such person stating the specific reasons why such person is unable to furnish the required opinion, report or certification on or before the date such report must be filed.
- (d) Notwithstanding paragraph (b) of this section, a registrant will not be eligible to use any registration statement form under the Securities Act of 1933 the use of which is predicated on timely filed reports until the subject report is actually filed pursuant to paragraph (b)(3) of this section.
- (e) If a Form 12b-25 filed pursuant to paragraph (a) of this section relates only to a portion of a subject report, the registrant shall:
  - (1) File the balance of such report and indicate on the cover page thereof which disclosure items are omitted; and
  - (2) Include, on the upper right corner of the amendment to the report which includes the previously omitted information, the following statement:

The following items were the subject of a Form 12b-25 and are included herein: (List Item Numbers)

- (f) The provisions of this section shall not apply to financial statements to be filed by amendment to a Form 10-K as provided for by paragraph (a) of Rule 3-09 of Regulation S-X or schedules to be filed by amendment in accordance with General Instruction A to form 10-K.
- (g) *Electronic filings.* The provisions of this section shall not apply to reports required to be filed in electronic format if the sole reason the report is not filed within the time period prescribed is that the filer is unable to file the report in electronic format. Filers unable to submit a report in electronic format within the time period prescribed solely due to difficulties with electronic filing should comply with either Rule 201 or 202 of Regulation S-T, or apply for an adjustment of filing date pursuant to Rule 13(b) of Regulation S-T.

## **EXHIBIT**

### **REG. §240.12b-30. Additional Exhibits**

The registrant may file such exhibits as it may desire, in addition to those required by the appropriate form. Such exhibits shall be so marked as to indicate clearly the subject matters to which they refer.

### **REG. §240.12b-31. Omission of Substantially Identical Documents**

In any case where two or more indentures, contracts, franchises, or other documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution, or other details, the registrant need file a copy of only one of such documents, with a schedule identifying the other documents omitted and setting forth the material details in which such documents differ from the document of which a copy is filed. The Commission may at any time in its discretion require the filing of copies of any documents so omitted.

### **REG. §240.12b-32. Incorporation of Exhibits by Reference**

- (a) Any document or part thereof filed with the Commission pursuant to any act administered by the Commission may, subject to §228.10(f) and §229.10(d) of this chapter be incorporated by reference as an exhibit to any statement or report filed with the Commission by the same or any other person. Any document or part thereof filed with an exchange pursuant to the act may be incorporated by reference as an exhibit to any statement or report filed with the exchange by the same or any other person.
- (b) If any modification has occurred in the text of any document incorporated by reference since the filing thereof,

the registrant shall file with the reference a statement containing the text of any such modification and the date thereof.

**REG. §240.12b-33. Annual Reports to Other Federal Agencies**

Notwithstanding any rule or other requirement to the contrary, whenever copies of an annual report by a registrant to any other Federal agency are required or permitted to be filed as an exhibit to an application or report filed by such registrant with the Commission or with a securities exchange, only one copy of such annual report need be filed with the Commission and one copy thereof with each such exchange, provided appropriate reference to such copy is made in each copy of the application or report filed with the Commission or with such exchange.

**SPECIAL PROVISIONS**

**REG. §240.12b-36. Use of Financial Statements Filed Under Other Acts**

Where copies of certified financial statements filed under other acts administered by the Commission are filed with a statement or report, the accountant's certificate shall be manually signed or manually signed copies of the certificate shall be filed with the financial statements. Where such financial statements are incorporated by reference in a statement or report, the written consent of the accountant to such incorporation by reference shall be filed with the statement or report. Such consent shall be dated and signed manually.

**REG. §240.12b-37. Satisfaction of Filing Requirements**

With regard to issuers eligible to rely on Release No. 34-45589 (March 18, 2002) or Release No. IC-25463 (March 18, 2002) (each of which may be viewed on the Commission's website at [www.sec.gov](http://www.sec.gov)), filings made in accordance with the provisions of those Releases shall satisfy the issuer's requirement to make such a filing under Section 13(a), 14 or 15(d) of the Act (15 U.S.C. §§ 77m(a), 78n or 78o(d)), as applicable, and the Commission's rules and regulations thereunder.